IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

Crl.MC.No. 213 of 2007()

CC.638/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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PETITIONER:

P.SREEDHARAN, S/O.SANKARAN,
AGED 67 YEARS, BUSINESS, RESIDING AT F-45,
EAST OF KAILASH, NEW DELHI - 110 065.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. AYILLIATH YEDUNATH NAMBIAR,
S/O.PADMANABHAN NAMBIAR,
WELLESLY ROAD, BURNASSERY, KANNUR.

3. A.RAMAKRISHANAN, S/O.SANKARAN,
AGED 57 YEARS, `NANDANAM',
MAIN ROAD, MUZHAPPILANGAD, KANNUR.

BY PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.213 of 2007

Dated this the 25th day of January, 2007

ORDER

The petitioner is the defacto complainant in a prosecution, inter alia, under Sections 420 and 468 I.P.C. Proceedings commenced on the basis of a private complaint filed by the petitioner, which was referred by the learned Magistrate to police under Section 156(3) Cr.P.C. Final report has been filed. Cognizance has been taken. The petitioner was summoned to appear. He has not appeared before the learned Magistrate personally so far. He entered appearance through a counsel and filed 3 applications. By then all the other material witnesses have been examined and only the petitioner remained to be examined. The 3 petitions were filed by him with the following prayers.

i) That he may be permitted to appoint a counsel to assist the Prosecutor under Section 302 Cr.P.C.

ii) To stay the proceedings under Section 309 Cr.P.C till the Civil Court which is seized of the matter disposes of that proceedings finally. &

iii) That a further investigation may be conducted under Section 173(8) Cr.P.C.

2. The first petition was dismissed by the learned Magistrate on the short ground that the petitioner had not appeared before the Court so far, he being the only remaining material witness to be examined. I am in agreement with the learned counsel for the petitioner that the said reason advanced is not sufficient or satisfactory. The petitioner is said to be employed at Delhi. The petitioner submits that he is willing to appear before the learned Magistrate on any specified date after a period of 15 days. In these circumstances, I am satisfied that the order, copy of which is produced as Annexure-A6, does deserve interference. That order has to be set aside. The petitioner must be permitted under Section 302 Cr.P.C to conduct the prosecution.

3. In so far as the second prayer for stay of the criminal prosecution is concerned, the learned counsel for the petitioner submits that the civil suit is pending and the questions which may have to be considered in both proceedings would overlap. That by itself is, according to me, too insufficient a reason to indefinitely postpone the criminal prosecution. In an appropriate case on facts, such a direction may not be impossible. But certainly it cannot be accepted as a rule of the thumb that when identical questions have to be considered by the civil court and the criminal court, the criminal prosecution will have to wait till the civil proceedings ends finally. The second prayer cannot be accepted and the learned Magistrate

committed no error in dismissing the same. No interference is warranted under Section 482 Cr.P.C in directing that stay shall not be granted. It cannot be lost sight of that trial had already commenced and the witnesses have already been examined.

4. The short prayer is for further investigation under Section 173(8) Cr.P.C. The learned Magistrate took note of the fact that the trial has progressed considerably. The learned Magistrate took note of the fact that the petitioner had not entered appearance. Even then the learned Magistrate did not say that the prayer for further investigation is not justified. The learned Magistrate wanted the petitioner also to be examined before deciding whether any further investigation is to be directed in the matter. A different conclusion would not have been perverse or impossible. But at any rate, I am not persuaded to agree that this is a fit case where the powers under Section 482 Cr.P.C can or ought to be invoked against the impugned order. The learned Magistrate in the impugned order, copy of which is produced as Annexure-A7, has very clearly said that “at the same time I would like to make it clear that after the examination, if sufficient grounds are made out, the petitioner is at liberty to file a petition for the same relief”. With that observation, the petition was disposed of. I need only mention that it is not necessary to insist on any further application by the petitioner. The application filed by the petitioner - C.M.P.2911 of 2006, copy of the order in this C.M.P is

produced as Annexure-A7, must be considered afresh by the learned Magistrate if an oral representation to that effect is made after examination of the petitioner.

5. I have proceeded to consider the challenge against all the 3 orders notwithstanding the technical objection raised that separate Crl.M.Cs must have been filed to assail each of these 3 orders. Ignoring that technicality, I am proceeding to dispose of the challenge against those 3 orders.

6. In the result:

i) This Crl.M.C is, allowed in part.

ii) Annexure-A6 order in C.M.P.No.2712 of 2006 is set aside. Necessary permission is accorded under Section 303 Cr.P.C;

iii) The challenge against the order in C.M.P.2711 of 2006, copy of which produced as Annexure-A5, is rejected;

iv) The challenge against Annexure-A7 order is rejected. But with the observation that notwithstanding Annexure-A7 order, after examination of the petitioner, the petitioner shall be entitled to renew the request, whereupon fresh orders must be passed on C.M.P.2911 of 2006 by the learned Magistrate without waiting for any further application.

6. The petitioner shall appear before the learned Magistrate on a date to be specified by the learned Magistrate. Such date must be at least 15 days after such date on which the specification is made.

7. Hand over a copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-